



FEDERAL ELECTION COMMISSION
Washington, DC 20463

OCT 24 2016

Teresa Wheatley

Round Rock, TX 78681

RE: MUR 6761

Dear Ms. Wheatley:

On April 21, 2016, the Federal Election Commission ("Commission") notified you of a complaint alleging that you may have violated the Federal Election Campaign Act of 1971, as amended ("Act"), provided you with a copy of the complaint, and afforded you an opportunity to respond. After reviewing the allegations contained in the complaint and publicly available information, the Commission, on October 18, 2016, found reason to believe that you violated 52 U.S.C. § 30122, a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a

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mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chair

Enclosures

Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Teresa Wheatley

MUR 6761

4 **I. GENERATION OF MATTER**

5 This matter was generated by a complaint filed with the Federal Election Commission
6 (“Commission”) by Dewhurst for Texas (“DFT”). *See* 52 U.S.C. § 30109(a)(1). The Complaint
7 alleged, among other things, that Kenneth A. “Buddy” Barfield, while serving as DFT’s
8 campaign manager and assistant treasurer, used fraudulent invoices from his consulting firm,
9 Alexander Consulting Group, LLC (“AGC”), to embezzle approximately \$1.2 million from DFT.
10 The Complaint also alleged that Teresa Wheatley, Barfield’s administrative assistant, contributed
11 \$5,000 to DFT in her own name with funds that Barfield transferred to her from AGC’s account
12 for that purpose.¹ DFT interviewed Wheatley as part of its internal investigation, and asserted,
13 based on her statements, that Barfield directed the transfer of \$5,000 to Wheatley’s personal
14 account before she contributed those funds to DFT.²

15 The Commission has obtained documents, including emails and bank records, which
16 appear to show that Wheatley, not Barfield, directed the transfer of \$5,000 from AGC’s bank
17 account to her personal account prior to making contributions to DFT in her own name.³
18 Because Wheatley therefore may have violated Section 30122 of the Act, the Commission
19 notified Wheatley of the allegations, provided her with a copy of the Complaint and the

1 ¹ Compl. at 12, Exs. J-1 to J-3.

2 ² *Id.* at 12.

3 ³ *See infra* note 9, 11, 12 and related text (discussing specific documents).

1 attachments to it that related to her alleged violations, and afforded her the opportunity to
2 respond.⁴ Wheatley did not file a response to the allegations.

3 For the reasons explained below, the Commission finds reason to believe that Teresa
4 Wheatley violated 52 U.S.C. § 30122.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Legal Standard**

7 Under the Act, a contribution includes “any gift, subscription, loan, advance, or deposit of
8 money or anything of value made by any person for the purpose of influencing any election for
9 Federal office.”⁵ The Act prohibits a person from making a contribution in the name of another
10 person, knowingly permitting his or her name to be used to effect such a contribution, or
11 knowingly accepting such a contribution.⁶ The Commission’s regulations also provide specific
12 illustrations of activities that constitute making a contribution in the name of another, which
13 include “Giving money or anything of value, all or part of which was provided to the contributor
14 by another person (the true contributor) without disclosing the source of money or the thing of
15 value to the recipient candidate or committee at the time the contribution is made.”⁷

16 **B. The Available Facts Indicate that Wheatley Violated 52 U.S.C. § 30122**

17 The facts available in the record before the Commission indicate that Wheatley violated
18 Section 30122 when she personally directed the transfer of \$5,000 from AGC’s bank account to
19 her personal account, and then contributed those funds to DFT in her own name. AGC’s bank

⁴ Letter from Jeff S. Jordan, Asst. Gen. Counsel, Fed. Election Comm’n, to Teresa Wheatley (Apr. 21, 2016).

⁵ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

⁶ 52 U.S.C. § 30122.

⁷ 11 C.F.R. § 110.4(b)(2)(i).

1 account summary sheet shows a wire transfer of \$5,000 from AGC's account to Wheatley's
2 account on November 27, 2012.⁸ In the subject line, the account summary states "For
3 Contribution." Wheatley's personal bank account also reflects an incoming wire transfer of
4 \$5,000 that posted on November 28, 2012.⁹ DFT received \$5,000 in contributions from
5 Wheatley on November 27, 2012.¹⁰

6 Crucially, an email between Wheatley and Wells Fargo Bank, which serviced AGC's
7 account, indicates that Wheatley directed that \$5,000 be transferred from AGC's account at
8 Wells Fargo to her personal account at Chase Bank.¹¹ Wheatley also wrote herself a \$50.00
9 check, dated November 29, 2012, on AGC's account to cover fees associated with the wire
10 transfer; the subject line of that check indicates that it is for "Reimbursement Banking Fees."¹²
11 These documents establish that Wheatley was not merely a passive "straw man" in a conduit
12 contribution scheme, but personally effectuated the transfer of funds from the true contributor to

⁸ See Compl. Exh. J-2.

⁹ See Wheatley JP Morgan Chase Bank Account Summary, 20_AGC LLC_WF 2012_T.pdf at 18.

¹⁰ See Dewhurst for Texas 2012 Year-End Report at 8 (Jan. 31, 2013).

¹¹ See Email from Teresa Wheatley to Wells Fargo Bank (Nov. 27, 2012), 20_AGC LLC_WF 2012_T.pdf at 15. The email includes an attachment titled "TW JP Morgan Chase.docx" and the text of the email reads, in full:

"This is request that you do a wire transfer in the amount of \$5,000 to the attached account of Teresa Wheatley from our Alexander Group account ending in 4191.

Please let me know if you have any questions.

Thank you

Teresa Wheatley".

¹² 20_AGC LLC_WF 2012_T.pdf at 17. Wheatley's account summary appears to show that she was charged a \$15.00 "Incoming Domestic Wire Fee" and a \$34.00 "Returned Item Fee for an Unpaid Check #6130 in the Amount of \$5,000." Handwritten in the margin of the printed account summary page for Wheatley's personal account, there is a note that appears to read: "T: Sorry Do a Check for 50.00 Next Time we will do a check!!" Although we do not know who wrote that note in the margin, we can logically infer that Wheatley may have been

1 herself prior to making contributions in her own name. While Wheatley, as Barfield's
2 administrative assistant, could have been acting on Barfield's instructions or with his
3 authorization, the available record does not provide any specific support for that inference and, in
4 any event, Wheatley's involvement appears to have gone beyond that of a low-level employee
5 performing a ministerial task.¹³ Accordingly, under these circumstances, the Commission finds
6 reason to believe that Teresa Wheatley violated 52 U.S.C. § 30122.

authorized to reimburse herself the additional \$50.00 in fees associated with receiving the \$5,000 wire transfer for the DFT contributions.

¹³ Wheatley did not clarify the record on this point after receiving notice of the complaint and an opportunity to respond to the allegations. The available record, therefore, indicates only that Wheatley transferred the funds from AGC's account to her personal account before making the contributions to DFT; Barfield's level of involvement in the scheme, if any, remains unclear.